

Attachment to Independent Case Review Report
For CDRU # 6437 Case file # 95-255925.

Material Examiner: Malone (RO)

Remarks:

Case resulted in trial, transcript available.

CRM - 14721

INDEPENDENT CASE REVIEW REPORT

Independent Review conducted by: Steve Robertson

Area(s) of Expertise: Hair and Fiber

Review commenced at: 11:15 AM (Time), 03/15/2001 (Date)

File #: 95-256335

Laboratory #(s): 30719053

Examiner(s) & Symbols

	Reviewed	Not Reviewed	Reviewed	Not Reviewed
<u>RQ</u>	X <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>UL</u>	<input type="checkbox"/>	X <input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Materials Reviewed

Trial testimony transcript(s) of: Michael Malone

Testimony Date(s): unknown Pages: 524-539

Laboratory Report(s):

Laboratory Number: 30719053 Date: July 26, 1983

Laboratory Number: _____ Date: _____

Laboratory Number: _____ Date: _____

Examiner Bench Notes of: RQ

Laboratory Number: 30719053

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Initials: SR

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Was any other material reviewed? Yes No

If yes, please identify and/or describe the material: Submitting agency letter (dated 7-15-83)

Results of Review

File #: 95-256335 Item or Specimen # Reviewed: Q1-Q4, Q7-Q16, K1, K2, K5, K6

Review of Laboratory Report(s) and Bench Notes:

Note: Numbered comments are required below or on additional pages for any "No" or "Unable to Determine" Responses

- 1) Did the examiner perform the appropriate tests in a scientifically acceptable manner, based on the methods, protocols, and analytic techniques available at the time of the original examination(s)?
 Yes No Unable to Determine
- 2) Are the examination results set forth in the laboratory report(s) supported and adequately documented in the bench notes?
 Yes No Unable to Determine

Review of Testimony:

Note: Numbered comments are required below or on additional pages for any "No" or "Unable to Determine" Responses

- Transcript not available.
- 3) Testimony consistent with the laboratory report(s)? Yes No Unable to Determine
 - 4) Testimony consistent with the bench notes? Yes No Unable to Determine
 - 5) Testimony within bounds of examiner's expertise? Yes No Unable to Determine

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Initials: JWA

Comments

(Set forth by above question #, if applicable.
Use "Additional Comments" Sheet, if needed)

File #: 95-256335

#1: With microscopic hair comparison, even with the best notes, there is no way to determine the comparison was performed correctly.

#2: The examination results set forth in the laboratory report are supported by the bench notes, but the documentation is marginally adequate. The notes are not dated or initialed and are in pencil. RQ uses abbreviations to indicate the microscopic characteristics of the hair. These abbreviations are difficult to interpret. There is not documentation in the technician's notes that hair was recovered from the victim's items (Q1-Q4, Q7-Q13) or from the suspect's items (Q14-Q16).

Malones' notes indicate the hair from the victim's sheet (Q12) matches K3(S). K3 is listed in the report as

Review completed at: 12:30 PM (Time), 03/15/2001 (Date)

Total time spent conducting review (to nearest 1/4 hour): 1:15 hours

I hereby certify that I conducted this review in an independent, unbiased manner and that the results of my review are fully documented on this report consisting of a total of 4 pages.

Stan Roberts 03/15/2001
(Signature) (Date)

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Initials: *SR*

Additional Comments
(Set forth by question #, if applicable)

File #: 95-256335

#2 (continued): being the victim's blood sample. K5 is listed in the report as being the suspect's head hair.

Malone's notes show K4 as the suspect's pubic hair but the report lists K4 as being the victim's saliva sample.

#3: To testify "within reasonable scientific certainty" that the hair from the victim's sheet is the suspect's hair is not consistent with the laboratory report that says "this hair could have originated" from the suspect.

#5: Malone testifies that is a hair does not have at least 15 characteristics, it is "not unique enough and is of no value for comparison and I will stop the exam here, so there is no real reason to go on". Contrast this testimony to the testimony in 95-255925 (same defendant, different victim).

Malone testifies that it is "highly unlikely" that another person exists who would have hair exactly like the suspect's hair. Microscopic hair comparisons are associative evidence that "do not constitute a basis for positive personal identification", as Malone states in his lab report on this case, and only serve to place an individual into a group of people who could be the possible source of the hair.

Testimony that "from all the literature in the field and my own experience, it is pretty commonly accepted" that the chance of a Type 2 error (an incorrect association-saying the hair came from a person when it did not) "is about one in five thousand". This testimony is incorrect on several counts. The chance of a Type 2 error depends upon the quality of the hair evidence and the training and experience of the hair examiner and is not "pretty commonly accepted" to be 1 in 5000. The 1 in 5000 chance that this evidence hair came from some other person besides the suspect is not supported in the literature. Malone's claim of examining hair from over 10,000 individuals and only being unable to tell the hair apart two times leads him to the 1 in 5000 chance the hair could be from another person besides the suspect. This is not the same as comparing the hair from all those 10,000 people to each other to determine how many would match another.

(The cross-examination part of the testimony is missing)

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Initials: SM